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5 **UNITED STATES DISTRICT COURT**  
6 **SOUTHERN DISTRICT OF CALIFORNIA**  
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8 TERRI ORTIZ, individually and on behalf  
9 of all others similarly situated,

10 Plaintiffs,

11 vs.

12 KRAFT FOODS COMPANY, a Delaware  
13 corporation,

14 Defendants.

CASE NO. 07cv0682-LAB (CAB)

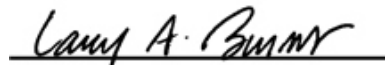
**ORDER DENYING AS MOOT  
MOTION TO DISMISS  
COMPLAINT**

[Dkt No. 13]

15 On July 30, 2007, the deadline for the filing of an Opposition to defendant's pending  
16 Motion To Dismiss Complaint (Dkt No. 13), plaintiff Terri Ortiz instead filed a First Amended  
17 Complaint. The Ninth Circuit allows a plaintiff to amend the Complaint once as a matter of  
18 right even after a motion to dismiss has been filed (or even granted), as long as the action  
19 has not been dismissed and the amended complaint is otherwise timely. Doe v. United  
20 States, 58 F.3d 494, 496-97 (9th Cir. 1995), *citing* Schreiber Distributing v. Serv-Well  
21 Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986) ("a motion to dismiss is not a 'responsive  
22 pleading' within the meaning of [Fed. R. Civ. P. 15(a)]" (citation omitted). "Neither the filing  
23 nor granting of such a motion before answer terminates the right to amend. . . ." Schreiber  
24 Distributing, 806 F.2d at 1401 (citation omitted). Accordingly, defendant's Motion To Dismiss  
is **DENIED AS MOOT.**

25 **IT IS SO ORDERED.**

26 DATED: August 9, 2007

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28 **HONORABLE LARRY ALAN BURNS**  
United States District Judge